IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4250 of 2001

to

FIRST APPEALNo 4253 of 2001

with

Civil Application No. 10366 of 2001

to

Civil Application No. 10369 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO.LTD.

Versus

TAPUBHA LAKHUBHA JADEJA

Appearance:

MS MEGHA JANI for appellant in all appeals

NOTICE SERVED for Respondent No.1

MR KISHOR M PAUL for rest of the Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 05/02/2002

COMMON ORAL JUDGEMENT

1. Since common question of law and facts are involved in this batch of four appeals, I propose to dispose of this group of first appeals by this common judgment.

2. By filing these appeals under Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short), appellant - National Insurance Company Limited seeks to challenge the order dated June 20, 2001 recorded below Ex.7 in MACP Nos.1920 to 1923 of 2000 by the MACT (Aux), Rajkot by which the appellant is directed to pay to respondents/claimants in claim petition a sum of Rs.50,000/- together with interest at the rate of 9% from the date of the application till its realization jointly and severally with respondent No.1 herein by way of compensation under "No Fault Liability' principle envisaged under section 140 of the Act.

3. All the respondents except respondent No.1 are the claimants before the Tribunal in the claim petitions filed under Section 166 of the Act to recover compensation on account of the death of kith and kin of the respondents/claimants on receipt of the vehicular injury as a result of the accident which had taken place on July 23, 2000 at about 1.30 P.M. near Tardhadi village wherein the vehicle belonging to respondent No.1 bearing Matador No.GJ 3 X 356 was involved. It is pleaded that all the respondents except respondent No.1 in these appeals are the claimants as their kith and kin who were travelling in the said matador and because of the rash and negligent driving on the part of its driver the accident has taken place wherein kith and kin of the respondents who boarded therein succumbed to the vehicular injuries which they have received in the said accident. In the claim petition the claimants have also filed an application under Section 140 of the Act for recovery of interim compensation.

4. The Tribunal considering FIR, Panchnama, statement of the persons travelling in the said matador, RC Book, permit of the vehicle, RTO certificate, death certificate and insurance policy came to the conclusion that the vehicle belonging to respondent No.1 was involved in the accident and in the said incident the kith and kin of the claimants who were travelling therein received fatal injuries on account of rash and negligent act of driving on the part of its driver and ultimately

all of them have succumbed to the fatal injuries and therefore they are entitled to interim compensation of Rs.50,000/- together with interest and accordingly the Tribunal awarded the said amount to the claimants which has given rise to the present group of appeals.

5. Ms. Megha Jani, learned advocate for the appellant has raised several contentions including that the driver of the vehicle was not having valid driving licence at the time of accident, the vehicle involved in the accident is a goods vehicle within the meaning and definition of "Goods Vehicle" and therefore the insurance company is not liable to indemnify the insured who has allowed the use of the vehicle in breach of the terms and conditions of the policy by allowing to board passengers therein and therefore the impugned order passed by the Tribunal is liable to be set aside and quashed by allowing these appeals.

6. Mr. Paul, learned advocate for the respondents/claimants contended that the application under Section 140 of the Act which is filed is in the nature of interim compensation and therefore requirement under Section 231 of the Gujarat Motor Vehicles Rules are to be complied with and if those requirements are complied with by way of summary procedure Tribunal has to decide the application and in the instant case the Tribunal has decided the applications accordingly. He has also contended that the amount awarded under the No Fault Liability principle is subject to adjustment against the final award which will be passed in substantive claim petitions which are still pending and therefore no interference is called for in the impugned order and therefore the appeals are liable to be dismissed.

7. I have heard Ms. Jani, learned advocate for the appellant and Mr. Paul, learned advocate for respondents/claimants. I have perused the averments made in the appeals, grounds set out therein, impugned order and also the copies of the documents supplied by Ms. Jani during the course of her submissions.

8. The amount awarded under the principle of No Fault Liability under Section 140 of the Act is an interim compensation and is subject to adjustment against the final award that will be passed in the MACP Nos.1920 to 1923 of 2000 which are still pending before the Tribunal. This principle is established by the Supreme Court in the case of the Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, 2001 (4) JT 477.

9. So far as the involvement of the vehicle is concerned, there is no dispute. There is also no dispute that in the said accident kith and kin of the respondents/claimants had received fatal injuries and succumbed to the same on account of rash and negligent act of driving on the part of the driver of the vehicle involved in the accident. It is also equally true that to conduct the application under No Fault Liability principle Rule 231 of the Gujarat Motor Vehicles Rules are to be invoked and as per the said rules the Tribunal has to verify the factum of accident, resultant injury which has resulted into permanent partial disablement or death of the person and the policy. In the instant case the Tribunal mainly relied on these three documents and has come to the conclusion that prima facie the claimants are entitled to receive the compensation under the No Fault Liability principle and accordingly awarded the compensation of Rs.50,000/- with interest thereon.

10. So far as the contentions raised by Ms. Jani are concerned, all the contentions can be raised in the main claim petitions which are still pending before the Tribunal. The Tribunal shall have to decide all the contentions raised by the insurance company in the said main claim petitions and adjudicate the same.

11. In view of the aforesaid state of affairs, I see no justifiable ground or valid reason to interfere with the impugned order at this stage. However, with a view to safeguard the interest of the appellant/applicant insurance company, undertaking of the original claimants is required to be obtained so that the original claimants shall not abandon the main claim petitions and withdraw the amount unconditionally with a view to fritter away the amount of compensation of Rs.50,000/- and interest thereon.

12. In view of this, it is directed that the original claimants shall file a solemn undertaking before the Tribunal within a period of four weeks hereof to the effect that the main claim petitions shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimants shall obtain a decision on merits in the said claim petitions and the amount withdrawn by them shall be repaid to the appellant in the event of decision in MACPs goes against them. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition. On the aforesaid undertaking being filed by the claimants,

the amount under the impugned order may be permitted to be withdrawn by the original claimants on furnishing security to the satisfaction of the Tribunal in terms of the directions contained in the impugned order.

13. Subject to the aforesaid observations and directions, the appeals are dismissed with no order as to costs.

14. Since all the appeals are dismissed, the above number civil applications do not assume any survival value and hence they are also dismissed. Notice issued in each of the applications is discharged with no order as to costs.

(A. M. Kapadia, J.)

(karan)